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ABSTRACT

This publication provides a brief introduction to core ideas of constitutional government in the United State as presented in "The Federalist" by Alexander Hamilton, James Madison, and John Jay. The first of "The Federalists" papers was written by Hamilton, who joined with Jay and Madison in this series of essays to refute the objections to the Constitution raised by the Anti-Federalists. Excerpts from both "The Federalists" and "The Anti-Federalists" series of publications are included. Both sides viewed liberty and order as the necessary ends of government, but could not agree as to what an acceptable balance between liberty and order would be. There was also disagreement within the Federalist camp. Hamilton argued that a strong central government was required to preserve the governmental integrity of the nation, and that checks and balances between the three branches of government would prevent any one branch from abusing its powers. Madison argued that government must have the power to maintain itself and perform its duties, but he spoke for limits to protect the liberty and security of the individual. Information and ideas that can be used in a Federalist/ Anti-Federalist forum focusing on the primary issue of the balance between liberty and order are presented. Suggestions are made on how to structure and conduct the forums. A chronology of events associated with the Federalist/Anti-Federalist debate, a guide for teachers and forum leaders, a participant rating sheet for the forum, and a bibliography of 18 items are also included. (PPB)

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Liberty and Order in Constitutional Government: Ideas and Issues in *The Federalist Papers*

John J. Patrick

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The Virginia Jefferson Association
1989

LIBERTY AND ORDER IN CONSTITUTIONAL GOVERNMENT: IDEAS AND ISSUES IN *THE FEDERALIST PAPERS*

by John J. Patrick
Director, Social Studies Development Center
Indiana University, Bloomington

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The author thanks the members of the Virginia Jefferson Association Board of Directors for their constructive criticisms and direction during development of this publication. Lee A. Chase and Warren A. Stewart deserve special recognition for their help. Mr. Stewart, president of the Virginia Jefferson Association, provided valuable advice and support throughout the development of this publication. Ms. Chase, a member of the Virginia Jefferson Association Board, helped the author to conceptualize this publication and offered useful ideas about the contents and style of it.

PREFACE

This publication provides a brief introduction to core ideas of constitutional government in the United States, which are treated in depth in *The Federalist* by Alexander Hamilton, James Madison, and John Jay. The Anti-Federalist perspective is also presented, because without it *The Federalist* can neither be fully understood nor appreciated. Both sides to the great debate of 1787-1788 have shaped our American political tradition, and the ideas and issues they addressed long ago are interesting and relevant to citizens today.

There is no richer source of wisdom about core ideas of our civic heritage than *The Federalist Papers* and select essays of the Anti-Federalists. These documents can be used to teach concepts of American constitutional government, such as republicanism, federalism, separation of powers, judicial review, civil liberties, popular sovereignty, ordered liberty, and so forth.

This booklet presents information and ideas that can be used in a FEDERALIST/ANTI-FEDERALIST FORUM—an open discussion on questions and issues about constitutional government in the United States. The primary focus of the FORUM proposed in this publication is a perennial problem of constitutional government: how to adequately provide both liberty and order for all individuals living under a government's authority. Participants in this FORUM are expected to use this booklet as a resource for deliberation, discussion, and decisions about different viewpoints on this perennial problem, which can be found in *The Federalist Papers* and Anti-Federalist essays.

The FEDERALIST/ANTI-FEDERALIST FORUM of this publication is similar in spirit and style to the JEFFERSON MEETING ON THE CONSTITUTION, a program of the Jefferson Foundation of Washington, DC and the Virginia Jefferson Association. Like the JEFFERSON MEETING, this FORUM is designed to promote reflective thinking, deliberation, and discourse about ideas and issues of constitutional government in the United States. Unlike the JEFFERSON MEETING, which is concerned with proposed amendments to the Constitution of the United States, this FORUM addresses alternative positions on a fundamental question in political the-

ory and practice: how to establish a constitutional government that provides both liberty and order—freedom and stability. Furthermore, this FORUM emphasizes acquisition and application of knowledge about core ideas in The *Federalist* and essays of the Anti-Federalists.

The "Guide for Teachers and FORUM Leaders" in the Appendix provides directions and suggestions for use of the booklet and management of the FEDERALIST/ANTI- FEDERALIST FORUM. It is expected that teachers and FORUM leaders will modify suggestions presented in this guide in order to meet the interests and needs of different groups of students and participants in this program.

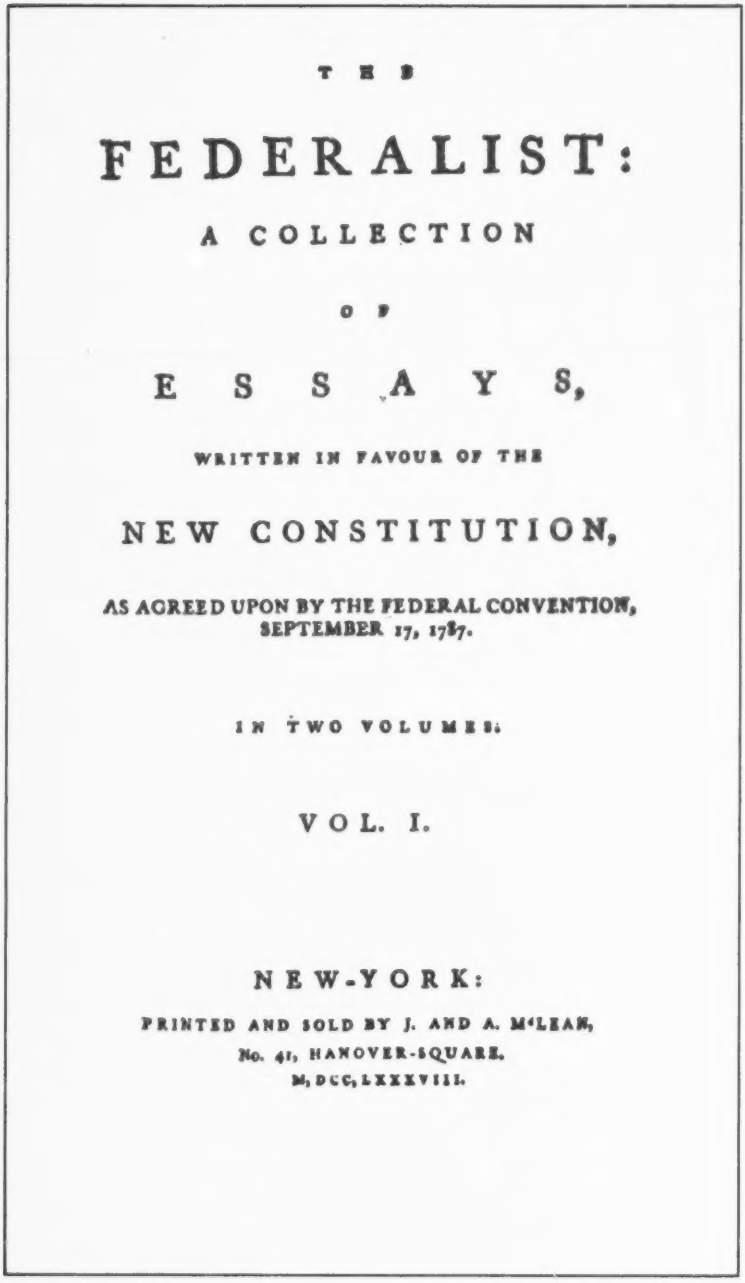
Readers of this booklet and participants in the FEDERALIST/ANTI-FEDERALIST FORUM are urged to examine the complete texts of several *Federalist Papers* (Nos. 1, 2, 4, 9-10, 14-15, 23, 37, 39, 41, 47-49, 51, 70, 78, 84-85 are especially useful). Careful reading of select *Federalist Papers* will provide elaborations upon ideas introduced in this booklet and thereby will be most helpful to participants in discussions and debates on positions of *The Federalist* and Anti-Federalists.

Careful reading of the complete texts of important Anti-Federalist essays, such as the sixteen essays by Brutus, is also recommended. These sources can be found in collections of Anti-Federalist essays listed in the Select Bibliography of this booklet.

A copy of the U.S. Constitution should also be available to users of this booklet and participants in the FORUM. Reference to the contents of the Constitution of 1787 will be necessary to clarify important points in the Federalist/Anti-Federalist debate.

Serious study of Federalist/Anti-Federalist ideas is a key to successful participation in the FORUM proposed in this booklet. Knowledge of Federalist/Anti-Federalist ideas is also a key to comprehension of the civic culture of the United States. The basic importance of the Federalist/Anti Federalist debate for Americans today was emphatically stated by Herbert Storing, the late expert on political theory of the Founding Period. Storing said: "If...the foundation of the American polity was laid by the Federalists, the Anti-Federalist reservations echo through American history; and it is in the dialogue, not merely in the Federalist victory, that the country's principles are to be discovered" (*What the Anti-Federalists Were For*), 1981, p. 72).

Users of this booklet are exposed to ideas and issues that can help them understand citizenship and government in the history and current events of the United States. These ideas and issues about constitutional government are forever relevant to people pledged to liberty and order under the higher law of the Constitution.


THE

FEDERALIST:

A COLLECTION

OF

ESSAYS,

WRITTEN IN FAVOUR OF THE

NEW CONSTITUTION,

AS AGREED UPON BY THE FEDERAL CONVENTION,
SEPTEMBER 17, 1787.

IN TWO VOLUMES.

VOL. I.

NEW-YORK:

PRINTED AND SOLD BY J. AND A. M'LEAN,
No. 41, HANOVER-SQUARE.
M, DCC, LXXXVIII.

Title page of the first edition of *THE FEDERALIST*, 1788

I. INTRODUCTION TO *THE FEDERALIST* AND THE ANTI-FEDERALISTS IN THE DEBATE ON RATIFICATION OF THE CONSTITUTION

What Is *The Federalist*?

THE FEDERALIST is "the best commentary on the principles of government which ever was written," wrote Thomas Jefferson to James Madison (November 18, 1788). Chief Justice John Marshall agreed in this instance with Jefferson, his long-time political opponent: "It [*The Federalist*] is a complete commentary on our Constitution, and it is appealed to by all parties in the questions to which that instrument gave birth" (*Cohens v. Virginia, 1821*). From the Founding Period to our own era, lawyers, judges, politicians, and scholars have used *The Federalist* to guide their deliberations and decisions about issues of constitutional government. And today, as in the past, *The Federalist* is viewed as *the* best work on first principles of constitutional government in the United States.

The Federalist, a collection of eighty-five papers (essays), was written to explain and support ratification of the Constitution of 1787. Seventy-seven essays were first printed in New York city newspapers between October 27, 1787 and April 2, 1788. The complete set (eight-five essays) was published in May 1788 by McLean and Company of New York city. What was the origin of *The Federalist*? Who wrote it? What were its purposes? Who opposed it?

Origin of *The Federalist*

In late September 1787, newspapers throughout the United States carried hot news. The headlines gave notice of an impending controversy:

CONGRESS SENDS NEW CONSTITUTION TO STATE GOVERNMENTS.

LEADERS ARGUE ABOUT RATIFICATION.

OPPOSITION GROWS DAILY.

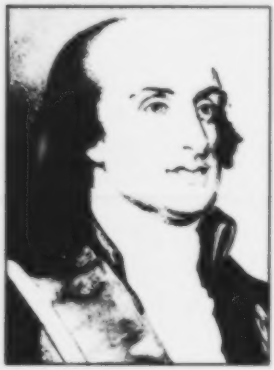
The Constitution, drafted by the Federal Convention of Philadelphia (May 25-September 17), was the object of disputes soon after *the people* saw it. For example, this Constitution was first printed in New York on Sep-

tember 21, and in less than one week arguments about it flared in taverns, clubhouses, streetcorners, and newspapers. Alexander Hamilton reported on his home state, New York, in a letter to George Washington: "The constitution proposed has in this state warm friends and warm enemies."

Opinion on the Constitution was sharply divided throughout the United States, which greatly concerned Alexander Hamilton. He had participated in the Federal Convention as one of the three delegates from New York. Although Hamilton had spoken in favor of a much stronger national government than had been approved by the Convention, he strongly preferred the Constitution of 1787 to the existing frame of government (Articles of Confederation) and was among the thirty-nine delegates who signed it. Hamilton also resolved to campaign for ratification against strong opposition to the new Constitution; among the opponents were the other delegates from New York to the Federal Convention, John Lansing and Robert Yates, and the powerful governor of New York, George Clinton.

Opponents wrote critical articles about the Constitution in daily newspapers of New York. Hamilton reacted with plans for a lengthy series of essays to refute these objections, and he influenced John Jay and James Madison to join him as authors of papers that would become *The Federalist*.

Authors of *The Federalist*

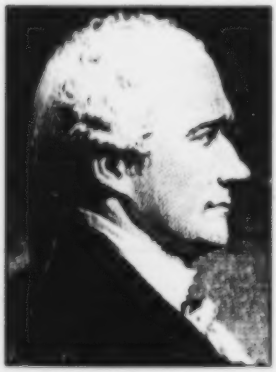


John Jay *Library of Congress*

JOHN JAY, at forty-two, was the oldest of the three authors. A New Yorker, he had served his state and nation as principal author of the state constitution, member of a delegation that negotiated the Treaty of Paris (1783) to officially end the War of Independence, and head of foreign affairs under the Articles of Confederation. In 1789, Jay became the first Chief Justice of the United States.

JAMES MADISON of Montpelier, Virginia was thirty-six years old in 1787 and had been among the most prominent leaders in the Federal Convention. Later, he was called "father of the Constitution" because of the great part he played in shaping the Constitution. In 1789, Madison became a Representative from Virginia to the first session of Congress under the Constitution; he proposed amendments that, following deliberation and modification, became the Federal Bill of Rights. He later served as Secretary of State under President Thomas Jefferson and as fourth President of the United States.

James Madison *Library of Congress*



Alexander Hamilton *Library of Congress*

ALEXANDER HAMILTON of New York city, originator of the project to write *The Federalist*, was the youngest member of the team, thirty-two years old in 1787. During the War of Independence, Hamilton was an assistant to General George Washington and rose to the rank of lieutenant colonel; he participated in the decisive battle of Yorktown. Later, Hamilton was a leader in bringing about the Federal Convention in 1787. He served as Secretary of the Treasury under President George Washington and established a sound financial foundation for the United States.

Hamilton, major author of *The Federalist*, wrote fifty-one of the eighty-five papers (Nos. 1, 8-9, 11-13, 15-17, 21-36, 59-61, and 65-85). Madison wrote twenty-nine essays (Nos. 10, 14, 18-20, 37-58, and 62-63). Illness forced John Jay to withdraw from the project, and he wrote only five essays (Nos. 2-5 and 64). Each paper was signed with the pseudonym, Publius, after Publius Valerius Publicola, a great defender of the Roman Republic of ancient times.

Purposes of *The Federalist*

The first objective of *The Federalist* was to persuade the people of New York to ratify the Constitution; each paper was addressed "To the People of the State of New York" and published first in a New York newspaper. A second objective was to influence Americans in all thirteen states to approve the Constitution. *The Federalist* was primarily a work of advocacy.

The authors submerged their political differences in the overall pursuit of a common goal—ratification of the Constitution. Madison and Jay agreed with Hamilton that the Constitution was "a compromise of...many dissimilar interests and inclinations." It did not exactly reflect the ideas on government of any one of the co-authors, but they agreed that it was the best frame of government achievable under the circumstances, and far superior to the Articles of Confederation.

In 1788, Madison noted variations in ideas of the three authors of *The Federalist*: "The authors are not mutally answerable for all the ideas of each other." After ratification of the Constitution and formation of the federal government, Madison joined Thomas Jefferson in political clashes with Hamilton that led to the establishment of rival political parties: Federalists (Hamilton) versus Republicans (Jefferson/Madison). These conflicts, however, lay ahead. In 1787-88, Madison and Hamilton were a formidable team in defense of the Constitution.

Hamilton, Madison, and Jay readily agreed on the name of their projected series of essays, *The Federalist*. With this name, they scored a public relations victory against their opponents, who accepted by default the label of Anti- Federalists, a negative name that connoted only opposition with no constructive ideas to improve the government.

There was irony here, because the opponents of Hamilton, Madison, and Jay considered themselves the "true federalists" (supporters of strong states' rights and powers in a union of states to make a federal system of government). By contrast, these "Anti-Federalists" viewed Hamilton and his allies as "consolidationists" (nationalists who would submerge states' rights and powers in favor of a supreme central government). Thus, early in the contest over ratification of the Constitution, the contending sides became known as Federalists (for ratification) and Anti-Federalists (against ratification).

In *The Federalist* No. 1, published in the *Independent Journal* of New York city (October 27, 1787), Hamilton discussed the overriding purposes

of his side in the debate on the Constitution. (See the excerpt below.) Examine the excerpt from *The Federalist* No. 1 and answer the following questions.

1. What is Hamilton's main point in the first paragraph of *The Federalist* No. 1?
2. According to Hamilton, what was the crisis that the people of the United States faced?
3. What are the purposes of *The Federalist*?

The Federalist No. 1 (Hamilton)

October 27, 1787

To the People of the State of New York:

AFTER an unequivocal experience of the inefficacy of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind....

I propose, in a series of papers, to discuss the following interesting particulars:—*The utility of the UNION to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of a Government at least equally energetic [powerful] with the one proposed [Constitution of 1787] to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government...and lastly, The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property.*

In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have claim to your attention....

Publius

In *The Federalist* No. 1, Publius (Hamilton) emphasized reflection, choice, and consequences. He reminded the American people that they had an unusual opportunity to thoughtfully choose their form of government. And he claimed that the decision was momentous—the very existence of the

United States and the liberty and security of its people hung in the balance. If they would choose wisely and ratify the Constitution of 1787, said Publius, then they and their descendents would enjoy liberty and order under a government based on the will of the people. If they failed in this choice, he warned, then their liberty, order, and security would be lost in the collapse of their UNION, the United States of America.

Purposes of the Anti-Federalists

Publius' opponents also valued liberty and order under a government of, by, and for the people. But they were skeptical of the new Constitution as the means to these ends. An Anti-Federalist writer, Brutus (probably Robert Yates), wrote an essay (printed in the *New York Journal*) about the critical constitutional choice facing Americans. Like Publius, he urged deliberation in this decision. See the excerpt from Essay I by Brutus. Examine this excerpt from Essay I and respond to the following items.

1. Compare and contrast the statements about purposes of Publius in *The Federalist* No. 1 with the statements of Brutus.
2. According to Brutus, what was the important question faced by the people of the United States?
3. Why was this question so very important to the future of liberty and order in the United States?

Essay I by Brutus

October 18, 1787
To the Citizens of the State of New York:

...The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the [1787] Constitution, offered to your acceptance, be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed.... But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty—if it tends to establish a despotism, or what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining asylum for liberty will be shut up and posterity will execrate your memory.

Momentous then is the question you have to determine, and you are called upon by every motive which should influence a noble and virtuous mind, to examine it well, and to make up a wise judgment.... be careful, in the first instance, how you deposit the powers of government....

And so, the issue was joined—how best to achieve both liberty for individuals and order for their society—freedom for the people and stability

and security for their United States of America. Would these ends be reached by accepting the Constitution of 1787? The Anti-Federalists answered "no" and did their best to convince Americans to reject the Constitution, or at least to change it in favor of their ideas.

II. LIBERTY AND ORDER IN CONSTITUTIONAL GOVERNMENT: CORE IDEAS IN THE RATIFICATION DEBATE, 1787-88

Liberty and Order as Ends of Government

Order, stability, and security have always been main objectives of government. People have accepted the power of governors who could provide order and protect their lives, properties, and communities from internal and external threats. People have also yearned for liberty. However, in most places and times (before the 1780s and afterwards) most people in the world have achieved a modicum of order, stability, and security through submission to the authority of government; liberty, in most places, usually has been the privilege of a powerful few and the elusive hope of the masses of people.

Americans in the 1780s (Federalists and Anti-Federalists) wanted both liberty and order—freedom and stability—and the framers of the Constitution of 1787 reflected these values in their memorable Preamble:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The Preamble states that "domestic Tranquility" (internal order) and "common defence" (protection against external threats) are important ends of government, as are "the Blessings of Liberty." These words symbolized the general agreement among Americans that constitutional government should provide liberty and order for people of their time and the future.

Tension Between Liberty and Order

LIBERTY AND ORDER—two great ends of constitutional government in the United States—are not always compatible. There often is tension between the need of the people for order, stability, and security and their right to liberty. And sometimes these equally important values of constitutional government are in sharp conflict.

A government must exercise power to provide order, stability, and security for its people. But if the government has too much power, then the people's liberties may be lost.

ALEXANDER HAMILTON expressed a common American view of unlimited power in government, whether exercised by one person, a minority group, or a majority of the people. "Men love power," said Hamilton. "Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many."

A constitution puts limits on the power of government to protect the liberties of individuals from oppression by any person or group. But if constitutional limits are too strict, then the government will be too weak to carry out its duties effectively. It will not be able to guard against foreign attacks, and it will not be able to enforce laws to maintain order within the society. So lack of power in government inevitably leads to disorder and instability in the society and insecurity of individuals; neither one's property nor one's freedom of action is secure in a lawless and disorderly community.

According to ALEXANDER HAMILTON: "It might be said that too little power [in government] is as dangerous as too much, that it leads to anarchy, and from anarchy to despotism.... Power must be granted or civil society cannot exist; the possibility of abuse is no argument against the thing."

Most Americans in the 1780s wanted a constitutional government that would neither be too strong nor too weak. They wanted their government to have enough power to maintain order and stability in the society and provide security and safety for individuals. They also wanted legal limits on the government's powers to protect liberties and rights of individuals against would-be tyrants.

JAMES MADISON stated the problem of constitutional government: how to balance power in government to provide order and security with limits on power to protect liberty. Examine the excerpt from *The Federalist* No. 37, and respond to the items below.

1. What is Madison's main idea in this excerpt from *The Federalist* No. 37?
2. Compare Madison's main idea with the ideas of Alexander Hamilton (presented above).
3. Compare Madison's main idea with the ideas of Thomas Jefferson and Oliver Ellsworth. (See the statements by Jefferson and Ellsworth, following the excerpt from *The Federalist* No. 37.)

***The Federalist* No. 37 (Madison)**

January 11, 1788

To the People of the State of New York:

...Among the difficulties encountered by the convention, a very important one must have lain in combining the requisite stability and energy [power] in government with the inviolable attention due to liberty.... Energy in government is essential to that security against external and internal danger and to that prompt and salutary execution of the laws which enter into the very definition of good government. Stability in government [and the order and security it provides] is essential [to the general well being of the nation, and] to that repose and confidence in the minds of the people, which are among the chief blessings of civil society.... On comparing, however, these valuable ingredients [power, order, stability, security] with the vital principles of liberty, we must perceive at once the difficulty of mingling them together [in a constitutional government] in their due proportions....

Publius

Acceptable Amounts of Liberty and Order in Government

Americans of the 1780s wanted constitutional government *to have power* needed to maintain order, stability, and security and *limits on power* needed to protect liberties and rights of the people. How could overemphasis on either power or its limits be avoided to provide acceptable amounts of liberty and order? This was a great problem of constitutional government in the 1780s (and remains so today).

THOMAS JEFFERSON expressed typical fears about an *overemphasis on power* to provide order and security: "It has been said that our governments...want energy [lack power]; that it is difficult to restrain...individuals...from committing wrongs. This is true, and it is an inconvenience. On the other hand that energy which absolute governments derive from an armed force, which is the effect of the bayonet constantly held at the breast of every citizen, and which [order and security] very much resembles the stillness of the grave, must be admitted to also have its inconveniences. We must weigh the two together, and like best to submit to the former."

OLIVER ELLSWORTH of Connecticut, who represented his state at the Federal Convention of 1787, voiced typical concerns about an *underemphasis on power* in government: "...power when necessary for our good is as much to be desired as the food we eat or the air we breathe. Some men are mightily afraid of giving power lest it should be improved [increased] for our oppression; this is doubtless possible...because a power of doing good always implies a power to do evil.... If, my countrymen, you wait for a constitution which absolutely bars a power of doing evil,

you must wait long, and when obtained it will have no power of doing good."

A workable balance is difficult to achieve between power sufficient to govern effectively to provide stability, security, and order and limits on power to protect liberty. Madison argued that the Constitution of 1787 could be effective in "defending liberty against power, and power against licentiousness; and in keeping every portion of power within its proper limits...." But Anti-Federalists feared that the Constitution of 1787 would provide a government too strong for the liberties of the people.

The Federalist/Anti-Federalist debates of 1787-88 addressed this perennial problem of constitutional government: how to achieve and sustain acceptable amounts of both liberty and order. Parts III, IV, V (following) present positions of *The Federalist* (Hamilton and Madison) and Anti-Federalists in response to this challenge. Their ideas are a legacy that may help us achieve liberty and order in our version of the constitutional government they founded.

III. *THE FEDERALIST* (HAMILTON) ON LIBERTY AND ORDER IN CONSTITUTIONAL GOVERNMENT

Intolerable Weakness in Government

ALEXANDER HAMILTON argued in *The Federalist* (Nos. 15-17; 21-22) that government under the Articles of Confederation was inadequate because it lacked "energy" (power) to enforce laws, mantain social order, provide protection against foreign enemies, and guarantee the private rights (e.g., property rights) of individuals. According to Hamilton, government under the Articles of Confederation provided neither liberty nor order.

In *The Federalist* No. 15, Hamilton lamented the "insufficiency of the present Confederation to the preservation of the Union." And he warned that "something is necessary to be done to rescue us from impending anarchy.... We may indeed with propriety be said to have reached the last stage of national humiliation.... We have neither troops, nor treasury, nor government [for the Union]."

There are no means to coerce individuals to obey laws of the United States, wrote Hamilton. "It is essential to the idea of law that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty [for] disobedience, the resolutions or commands which pretend to be laws will... amount to nothing more than advice or recommendation...." But mere recommendations will not suffice. "Because the passions of men will not conform to the dictates of reason and justice without constraint" (No. 15).

In Nos. 16-17 and 21-22, Hamilton emphasized the central government's lack of power to collect taxes and to raise military forces for defense of the United States. He complained that the state governments had too much power to block actions of the central government because only they, and not the government of the United States, could deal directly with individuals. "The United States as now composed have no power to exact obedience...to their resolutions...by any...constitutional means. There is no express delegation of authority to them to use force against delinquent members [states or individuals]...." (No. 21).

The Articles of Confederation provide that "each state shall retain every power, jurisdiction, and right, not expressly delegated to the United States...." Powers of government are so weighted in favor of the states as

to render impotent the central government of the United States. And so Hamilton made his case against intolerable weakness in government under the Articles of Confederation (No. 21).

The Infusion of Energy in Government

Hamilton offered remedies to weakness in government in Nos. 23-36 and 70-81. He emphasized these points:

- Invest the government with every power necessary to carry out duties the people expect of it, such as protection against foreign governments and internal uprisings that would threaten public order and security of individuals in their private rights to life, liberty, and property.
- Grant constitutional powers to the federal government to collect taxes and raise military/police forces, so that it has means to carry out its proper duties.
- Diminish powers of state governments by enabling the federal government to deal directly with individuals instead of having to act through state governments.
- Establish a powerful chief executive who can enforce laws of the United States and protect national interests in dealing with foreign governments.
- Establish a federal judiciary to interpret the laws and insure their equitable operation in society.

Limits to Energy in Government

Hamilton certainly stressed the need for more "energy" in government to provide order, stability, and security for the nation and its people. What were his ideas about how to protect liberty against the danger of too much energy? (See Nos. 23-24; 26-34; 78-81.)

- Structure the government so as to block any person or group from misusing power to destroy rights and liberty of individuals (e.g., separating powers among three branches of government and making officials accountable to people whom they represent).
- Limit the powers of government through constitutional exceptions to these powers (statements of things it may not do, e.g., pass an *ex post facto* law.
- Grant power to the federal judiciary to invalidate acts of the government that violate the Constitution, thereby protecting liberties of individuals against governmental abuses of power.
- Grant the power of the purse to the Congress, thereby enabling it to withhold resources from a chief executive who might otherwise use power to violate the liberty and rights of individuals.
- Enable the people to protect liberty by participating in government (e.g., election of representatives).

Excerpts from Hamilton's Essays in *The Federalist*

Examine the following excerpts from *The Federalist* Nos. 23, 24, 70, 78. In No. 23, Hamilton argued for a central government that has enough power to successfully carry out tasks that the people ought to expect of it, including the establishment of order, stability, and security for the society and its individuals. In No. 24, he contended that the military powers of the central government are properly limited. In No. 70, Hamilton called for strong executive power in constitutional government to provide order, stability, and security and said that there are appropriate means to limit this power. In No. 78, Hamilton stressed the powers of an independent judicial branch of government as an effective check upon abuses of power by other branches.

Find in the following excerpts (Nos. 23, 24, 70, 78) examples of Hamilton's ideas (presented in the preceding lists) on appropriate powers and limitations on powers in constitutional government.

Answer these questions about the following excerpts from the essays of Hamilton.

1. According to Hamilton, what are principal purposes of a constitutional government?
2. In Hamilton's view, what kinds of powers does a constitutional government need to achieve its purposes?
3. How can powers be granted to a constitutional government to provide both liberty and order?
4. How can powers of a constitutional government be appropriately limited, so that it can achieve its purposes of providing order, stability, and security and protecting liberty?
5. How can the judicial branch protect liberty in a constitutional government?

The Federalist No. 23 (Hamilton)

December 18, 1787

To the People of the State of New York:

THE necessity of a Constitution, at least equally energetic [powerful] with the one proposed, to the preservation of the Union is the point....

The principal purposes to be answered by union are these—the common defense of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, *because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them....*

...the Union [United States] ought to be invested with full power to levy troops; to build and equip fleets, and to raise the revenues [through taxes] which will be required for the formation and support of an army and navy in the customary and ordinary modes practiced by other governments.

...it is both unwise and dangerous to deny the federal government an unconfined authority in respect to all those objects which are entrusted to its management [grants of power enumerated in the Constitution]. It will indeed deserve the...vigilant and careful attention of the people to see that it [federal government] be modeled [limited by its structure] in such a manner as to admit of its being safely vested with the requisite powers... A government, the constitution of which renders it unfit to be trusted with all the powers which a free people *ought to delegate to any government*, would be an unsafe and improper depositary of the NATIONAL INTERESTS. Whenever THESE can with propriety be confided, the co-incident powers may safely accompany them.... The POWERS [Constitution of 1787] are not too extensive for the OBJECTS of federal administration [order/security for the Union and its people], or in other words, for the management of our NATIONAL INTERESTS....

Publius

The Federalist, **No. 24 (Hamilton)**

December 19, 1787

To the People of the State of New York:

TO the powers proposed to be conferred upon the federal government, in respect to the...national [military] forces, I have met with but one specific objection [which is] that proper provision has not been made against the existence of standing armies in time of peace; an objection which...rests on weak and unsubstantial foundations....

A stranger to our politics, who was to read our newspapers at the present juncture without having previously inspected the plan [Constitution] reported by the convention, would be naturally led to one of two conclusions: either that it contained a positive injunction that standing armies should be kept up in time of peace; or that it vested in the EXECUTIVE the whole power of levying troops without subjecting his discretion, in any shape, to the control of the legislature.

If he came afterwards to peruse the plan itself, he would be surprised to discover that...the whole power of raising armies was lodged in the *legislature,* not in the *executive;* that this legislature was to be a popular body, consisting of the representatives of the people periodically elected; and that instead of the provision he had supposed in favor of standing armies, there was to be found in respect to this object, an important qualification even of the legislative discretion, in that clause which forbids the appropriation of money for the support of an army for any longer period than two years—a precaution which upon a nearer view of it will appear to be a great and real security against military establishments....

Publius

The Federalist, No. 70 (Hamilton)

March 15, 1788

To the People of the State of New York:

...Energy [power] in the executive is a leading character [trait] in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property...to the security [protection] of liberty against the enterprises and assaults of ambition, of faction, and of anarchy....

A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government....

The ingredients which constitute energy in the executive are unity [one chief executive], duration [a long enough term of office], an adequate provision for its support [adequate revenues through taxation], and competent powers.

The ingredients which constitute safety in the republican sense [limits on power to guard against abuses of liberty] are a due dependence on the people, and a due responsibility [accountability of the executive to the people and to their representatatives in Congress]....

Publius

The Federalist, No. 78 (Hamilton)

May 28, 1788

To the People of the State of New York:

...The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through...courts of justice, whose duty it must be to declare all acts contrary to...the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing....

No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm...that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid....

If...the courts of justice are to be...bulwarks of a limited Constitution...this [calls for] permanent tenure of judicial offices [to keep] that independent spirit in the judges...essential to...faithful performance of [their] duty....

Publius

IV. *THE FEDERALIST* (MADISON) ON LIBERTY AND ORDER IN CONSTITUTIONAL GOVERNMENT

Threats to Liberty from a Tyrannical Majority

In *The Federalist* Nos. 10 and 51, James Madison argued for constitutional limits on power in government to protect the liberty and security of individuals. He equally opposed the absolutism of (1) a monarch or military dictator (the tyranny of one), (2) an aristocracy or oligarchy (tyranny of the few over the many), or (3) a majority of the people (tyranny of the many over the few). In a republic (government by elected representatives of the people), the greatest threat to liberty would come from an unrestrained majority.

Madison expressed fears of a tyrannical majority in a letter to Thomas Jefferson (October 17, 1788): "Wherever the real power in a Government lies, there is the danger of oppression. In our Government, the real power lies in the majority of the Community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number [majority] of the constituents. This is a truth of great importance, but not yet sufficiently attended to.... Whenever there is an interest and power to do wrong, wrong will generally be done, and not less readily by [a majority of the people] than by a...prince."

Madison wanted government by majority rule of duly elected representatives of the people, but the majority's power must be limited. If not, people that the majority disliked would lose basic freedoms and opportunities.

A Well-Structured Constitution to Prevent Tyranny

Madison offered ways to check tyranny to protect liberty and provide order (***The Federalist*** Nos. 10, 14, 37-40; 47-58, and 62-63). He stressed these ideas:

- A well-structured constitution can protect liberty and security of individuals from tyranny, especially tyranny of majorities against unpopular persons.

- Essential elements of well-structured constitutional government are (1) federalism in a large republic and (2) separation of powers in federal government.
- Federalism checks tyranny by dividing powers between a central government and state governments; the two levels of government check and control one another.
- Conditions in large federal republics are conducive to election of worthy representatives and to prevention of oppression by majority groups; there are so many different groups and interests that it is difficult for any one to dominate; rather, various groups and individuals must compromise and cooperate to make decisions by majority vote.
- Separation of powers among the branches of government prevents any person or group from having power to oppress others; Madison wrote: (No. 47): "The accumulation of all powers, legislative, executive, and judiciary, in the same hands...may justly be pronounced the very definition of tyranny."
- Each branch of government has constitutional power to check the others to prevent tyranny; each branch is accountable to the others, and all representatives are ultimately accountable to the people.
- The popularly elected part of the legislature must be carefully checked because, as the branch directly accountable to the people, it is prone to acts of tyranny based on the will of a popular majority.

Necessary and Proper Powers in a Free Government

FREE GOVERNMENT, according to Madison, is based on the popular majority; but it is limited by the higher law of the Constitution to protect rights and liberties of individuals in the minority. However, a free government must also have constitutional powers to maintain itself and fulfill its duties, such as providing order, stability, and security for individuals and their society. Madison stressed in *The Federalist* Nos. 41-48 and 62-63 the following main points about powers needed to provide order in the United States and protect the liberty of individuals:

- A free government should have power needed to provide security against foreign threats, protect national interests in dealings with foreign governments, manage harmonious relations among the states of the Union, keep order within the United States.
- The "necessary and proper" clause in Article I, Section 8 of the Constitution is essential to the effective operation of a free government: "Without the *substance* of this power, the whole Constitution would be a dead letter" (No. 44).
- Power in constitutional (limited) government is properly used in regulating affairs of the people to enforce "the rules of the game" in the ongoing competition between persons and groups of a free society.

Excerpts from Madison's Essays in *The Federalist*

Examine the following excerpts from *The Federalist* Nos. 10, 41, 51. In this excerpt from No. 10, Madison discussed federalism in a large republic as a limitation on tyranny by majority rule. In No. 41, he identified powers in constitutional government needed to provide order, stability, and security and argued that the Constitution of 1787 properly grants and limits these powers. In No. 51, Madison contended that a well-structured constitution is the means to limited government and protection of individual liberties.

Find in the following excerpts (Nos. 10, 41, 51) examples of Madison's ideas on (1) threats to liberty from majority rule, (2) constitutional means to prevent tyranny, and (3) necessary and proper powers in a free government. Answer these questions about the following excerpts from the essays of Madison.

1. Why, according to Madison, is majority rule a potential source of tyranny in a republic?
2. How does Madison propose to structure the federal government to prevent tyranny from any source, but especially tyranny of the majority?
3. According to Madison, what are the necessary and proper military powers of a constitutional government?
4. How does Madison propose to limit military powers of the federal government to protect individual rights and liberties?

***The Federalist* No. 10 (Madison)**

November 22, 1787

To the People of the State of New York:

AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction....

By a faction I understand [mean] a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens....

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote.... When a majority is included in a faction, the form of popular government...enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction [majoritarian tyranny], and at the same time to preserve the spirit and the form of popular government [majority rule], is then the great object....

...it may be concluded that a pure [direct] democracy, by which I mean a society consisting of a small number of citizens, who assemble and ad-

minister the government in person, can admit of no cure for the mischiefs of faction [majoritarian tyranny]. A common passion or interest will, in almost every case, be felt by a majority of the whole... and there is nothing to check the inducements to sacrifice [oppress] the weaker party or an obnoxious individual. Hence it is that such democracies [with unlimited majority rule] have ever been spectacles of turbulence [disorder] and contention; have ever been found incompatible with personal security or the rights of property....

A republic,...government in which the scheme of representation takes place, opens a different prospect....

The two great points of difference between a [direct and unlimited] democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens and greater sphere of country over which the latter [republic] may be extended.

The effect of the first difference is...to refine and enlarge the public views by passing them through the medium of a chosen body of citizens [elected representatives of the people], whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations....

[The effect of the second difference]...the greater number of citizens and extent of territory which may be brought within...republican...government...renders factious combinations less to be dreaded....The smaller the society, the fewer probably will be the distinct parties and interests [groups with a common aim] composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass [area] within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere [area], and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade [take away] the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other.

...it clearly appears that the same advantage which a republic has over a [direct] democracy in controlling the effects of faction is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it.... Here again the extent [large territory] of the Union gives it the most palpable advantage [in limiting the power of majorities to oppress unpopular individuals]....

In the extent and proper structure of the Union...we behold a republican remedy for the diseases most incident to republican government....

Publius

The Federalist No. 41 (Madison)

January 19, 1788

To the People of the State of New York:

...Is the aggregate power of the general [federal] government greater than ought to have been vested in it?

...in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. ...in all cases where power is to be conferred, the point first to be decided is whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard...against a perversion of the power to the public detriment.

...the several powers conferred on the government of the Union [include] powers...of declaring war...of providing armies and fleets; of regulating and calling forth the militia; of [raising taxes] and borrowing money.

Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils [federal government]....

How could a readiness for war in time of peace be safely prohibited, unless we could prohibit in like manner the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack.... If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions....

A standing force...is a dangerous, at the same time that it may be a necessary, provision.... On an extensive scale its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties.

...the best possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support. This precaution the Constitution has prudently added [Congress decides every two years on funding for the army].

...the Constitution has provided the most effectual guards against danger from [a standing army or permanent military establishment]....

...nothing short of a Constitution fully adequate to the national defense and the preservation of the Union can save America [from internal and external dangers]....

Publius

The Federalist No. 51 (Madison)

February 6, 1788

To the People of the State of New York:

TO what expedient then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments [branches of government] as laid down in the Constitution? The only answer...is...by so contriving the interior structure of the government as that its...constituent parts may, by their mutual relations, be the means of keeping each other in their proper places....

...separate and distinct exercise of the different powers of government [legislative, executive, judicial]... is...essential to the preservation of liberty....

But the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means [checks] and personal motives to resist encroachments of the others.... It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions [a well-structured constitution].

In republican government, the legislative authority necessarily predominates. The remedy...is to divide the legislature into different branches and to render them, by different modes of election and different principles of action, as little connected with each other as [circumstances will permit]....

In the compound republic of America, the power...is first divided between two distinct governments [federal and state], and then the portion allotted to each subdivided among distinct and seperate departments [branches]. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself....

Publius

V. ANTI-FEDERALISTS ON LIBERTY AND ORDER IN CONSTITUTIONAL GOVERNMENT

Opposition to Strong Power in a "Consolidated" Government

BRUTUS (pseudonym), a New York Anti-Federalist (probably Robert Yates), warned the people "that a *consolidation* of this extensive continent under one government...cannot succeed, without a sacrifice of your liberties." He argued that the Constitution of 1787 gave a central (consolidated) government too much power at the expense of the state governments.

Brutus wrote sixteen essays printed in the *New York Journal*—October 18, 1787 to April 10, 1788—the same months when *The Federalist Papers* were also published in New York newspapers. Brutus' essays countered the arguments in *The Federalist Papers*, and from then until now have been judged among the best expressions of the Anti-Federalist position.

Brutus did not exactly represent the thinking of all Anti-Federalists, who had various ideas on liberty and order in constitutional government. Brutus' essays, however, reflect a basic Anti-Federalist position: the Constitution of 1787 placed too much emphasis on order and stablity and too little emphasis on liberty. Major ideas of Brutus and other Anti-Federalists are stated below:

- The central government has too much power at the expense of state governments; so the federal nature of the Union is lost and replaced by a consolidation of power in a distant national government; tyranny will result because a true free government is one close to (not remote from) the people it represents.
- Excessive powers of the central government include its authority to tax, command military forces, keep an army in peacetime, "provide for the common Defence and general Welfare of The United States"—a power so broadly and vaguely stated as to invite abuse.
- The power of Congress to pass any laws "necessary and proper" to carry out its enumerated powers means it could too easily and greatly expand its powers.
- The chief executive and Senate have too much power relative to the House of Representatives, the branch closest to the people (e.g., the President with 2/3 approval of the Senators makes treaties that become

part of the supreme law of the land); liberty is thereby threatened because the President and Senate are much less accountable to the people.
- The judicial branch threatens liberty because it is too removed from accountability to the people and can overrule acts of state governments.

Advocacy of the Small Republic

Brutus and other Anti-Federalists wanted the balance of power in the Union to greatly favor the state governments (the smaller republics of the Union) rather than the central government, which *The Federalist* portrayed as a large republic. They emphatically rejected "federalism in an extended republic" while associating liberty with the ideal of a small republic. Why? What were the main characteristics of the Anti-Federalists' ideal, the small republic?

- In a small republic, people are directly connected to their representatives in government, who are close and familiar to them.
- Representatives in government mirror traits and ideas of their constitutents; groups and interests in the society are reflected in the legislature.
- In contrast to an extended federal republic, there is likely to be much less diversity of groups and opinions in a small republic, which lessens conflict and encourages formation of stable majorities.
- Popular majority rule prevails as people have ample opportunity and motivation to participate in government as voters and candidates in public elections.
- The government is directly accountable to the people through regular elections of officials with very short terms of office.
- Government is limited and tyranny prevented primarily by majority rule expressed through popular participation in government.
- The government has little need for strong coercive powers, because when people are part of their government, they are likely to be satisfied with it and conform readily to its rules.

Arguments for a Federal Bill of Rights

Anti-Federalists wanted to block ratification of the Constitution of 1787; but many of them were willing to accept it with amendments to modify what they believed to be its worst characteristics. They proposed amendments that led eventually to the Bill of Rights, Amendments I-X, ratified in 1791. Anti-Federalist ideas about the need for a Federal Bill of Rights exemplified their concerns about limiting the power of a central government to guard the rights of state governments and liberties of the people.

GEORGE MASON, a Virginia delegate to the Constitutional Convention, was a leading advocate for a Bill of Rights in the Constitution of 1787. In Mason's opinion, the federal government was strong enough to seriously threaten the liberties of the people unless strict limits were placed on its power. At the end of the Convention, Mason refused to sign the Consti-

tution. In November 1787 Mason's arguments against the Constitution were published in various newspapers.

> There is no Declaration of Rights; and the Laws of the general Government being paramount to the Laws and Constitutions of the several States, the Declaration of Rights in the separate States are no Security [for the natural rights and liberties of the people].
>
> ...the State Legislatures have no Security for the Powers now presumed to remain to them; or the People for their Rights.
>
> There is no Declaration of any kind for preserving the Liberty of the Press, or the Trial by Jury in civil Causes; nor against the Danger of standing Armys in time of Peace....

Excerpts from the Anti-Federalist Essays of Brutus

Brutus agreed with George Mason and other Anti-Federalists about the dangers to liberty of the Constitution of 1787. See the following pages for excerpts from Brutus' Anti-Federalist essays I, II, IV, X, XV. In Essay I, he discussed flaws of a consolidated government; in II, a Bill of Rights to protect individual liberties, in IV, representation in government; in X, excessive military power; and in XV, excessive judicial power.

Brutus stressed his idea of FREE GOVERNMENT: "...the people must give their assent to the laws by which they are governed. This is the true criterion between a *free Government* and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon, the latter by the will of one or a few..." (Essay I).

Find examples in Brutus' essays (I, II, IV, X, XV) of Anti-Federalist ideas about flaws in the Constitution of 1787. Identify ideas in Brutus' essays that fit main points of the Anti-Federalist position (stated in the preceding pages) about (1) dangers of power in a consolidated government, (2) representation in republican government, (3) the ideal of a free government in a small republic, and (4) the need for a Bill of Rights to protect liberties of individuals and states.

Respond to the items below about the following excerpts from the essays of Brutus.

1. What did Brutus say about the evils of consolidated government?
2. According to Brutus, why was the Constitution of 1787 likely to bring about a consolidated government?
3. What did Brutus say about the need for a Bill of Rights in the constitution of a free government?
4. According to Brutus, why was the Constitution of 1787 deficient in its provisions for representation of the people in government?
5. What were Brutus' ideas about the proper uses and limits of military power in a constitutional government?
6. Why did Brutus consider the Supreme Court in the Constitution of 1787 to be a source of tyranny?
7. Compare the ideas of Brutus and George Mason about weaknesses in the Constitution of 1787.

Essay I by Brutus

October 18, 1787

To the Citizens of the State of New York:

...This government [Constitution of 1787] is to possess absolute and uncontrollable power...with respect to every object to which it extends, for...it is declared "that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof."

...there is no need of any intervention [involvement] of the state governments...to execute any one power vested in the general government...[which] is a complete one and not a confederation. ...some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states must very soon be annihilated.... The powers of the general legislature extend to every case of the least importance [e.g., taxes, commerce, military powers].... there is no limitation to this power [to] provide for the common defence and general welfare of the United States...and they only [members of Congress] are to determine what is for the general welfare; this power therefore is neither more nor less than a power to lay and collect taxes...at their pleasure; not only [is] the power to lay taxes unlimited, as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No state legislature, or any power in the state governments, have any more to do in carrying this into effect.... In...laying and collecting taxes, the idea of confederation is totally lost, and that of one entire [extended] republic is embraced.... the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in...time draw all others after it....

...power [to use revenues from taxes] to raise and support armies at pleasure, as well in peace as in war, and their control over the militia, tend, not only to a consolidation of the government, but the destruction of liberty....

In so extensive a republic, the great officers of government would soon become above the control of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them....

Essay II by Brutus

November 1, 1787

To the Citizens of the State of New York:

...Those who have governed have been found in all ages ever active to enlarge their powers and abridge [limit] the public liberty. This has induced the people in all countries, where any sense of freedom remained, to fix barriers against the encroachments [abuses of power] of their rulers. The country from which we have derived our origin [England] is an eminent example of this. Their Magna Carta and Bill of Rights have long been the boast as well as the security of that nation. I need to say no more, I presume, to an American, than that this principle is a fundamental one in all the constitutions of our own states [the 13 United States of America]; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservation of rights interwoven in the body of them....It is therefore the more astonishing that this grand security to the rights of the people is not to be found in this [1787] Constitution [of the United States]....

The powers, rights, and authority granted to the general government by this [1787] Constitution are as complete, with respect to every object to which they extend, as that of any state government. It reaches to every thing which concerns human happiness—Life, liberty, and property are under its control. There is the same reason, therefore, that the exercise of power, in this case, should be restrained within proper limits [by a Bill of Rights] as in that of the state governments....

Ought not a government vested with such extensive and indefenite authority [as is the government of the United States under the proposed Constitution of 1787] to have been restricted by a declaration of rights? It certainly ought. [This Bill of Rights should declare that the government cannot take away from individuals certain liberties, such as freedom of speech and press; and it should protect people against acts of oppression by the government].

So clear a point is this that I cannot help suspecting that persons who attempt to persuade people that such reservations were less necessary under this Constitution than under those of the states are willfully endeavoring [trying] to deceive, and to lead you into an absolute state of vassalage [with the consequent loss of individual liberties]....

Essay IV by Brutus

November 29, 1787

To the Citizens the State of New York:

There can be no free government where the people are not possessed of the power of making the laws by which they are governed either in their own persons, or by others [representatives] substituted in their stead....

...in...a good constitution...the power is committed to [representatives with] the same feelings...and...the same objects as the people [have]...who transfer to them their authority. There is no possible way to effect this but by an equal, full and fair representation.... For without this it cannot be a free government; let the administration of it be good or ill, it still will be a government, not according to the will of the people, but according to the will of a few. [The Constitution of 1787 provides for too few representatives; they will be too distant from constituents and unlike the people they represent.]

A farther objection against the feebleness of the representation is, that it will not possess the confidence of the people. The execution of the laws in a free government must rest on this confidence, and this must be founded on the good opinion they entertain of the framers of the laws. Every government must be supported, either by the people having such an attachment to it...or by a force at the command of the government to compel obedience. The latter mode destroys every idea of a free government; for the same force that may be employed to compel obedience to good laws, might, and probably would be used to wrest from the people their constitutional liberties.—Whether it is practicable to have a representation for the whole union [United States] sufficiently numerous to obtain that confidence which is necessary for the purpose of internal taxation, and other powers to which this proposed government extends, is an important question. I am clearly of the opinion it is not.... one of the most capital errors in the system [Constitution of 1787] is that of extending the powers of the federal government to objects to which it is not adequate, which it cannot exercise without endangering public liberty, and which it is not necessary they should possess, in order to preserve the union [United States] and manage our national concerns....

If then this government should not derive support from the good will of the people, it must be executed by force, or not executed at all; either case would lead to the total destruction of liberty....

Essay X by Brutus

January 24, 1788

To the Citizens of the State of New York:

The liberties of a people are in danger from a large standing army...because the rulers may employ them for the purposes of...usurpations of power which they may see proper to exercise....

...the evil to be feared from a large standing army in time of peace does not arise solely from the apprehension that the rulers may employ them for the purpose of promoting their own ambitious views, but that equal, and perhaps greater danger, is to be apprehended from their overturning the constitutional powers of the government, and assuming the power to dictate any form they please....

...an absolute prohibition against raising troops, except in case of actual war, would be improper, because it will be requisite to raise and support a small number of troops to garrison the important frontier posts, and to guard arsenals; and it may happen, that the danger of an attack from a foreign power may be so imminent, as to render it highly proper we should raise an army, in order to be prepared to resist them....

It is...very practicable to give the government... authority to provide for these cases, and at the same time to provide...security against the evil of a standing army—a clause [in the Constitution] would answer the end [need]....no standing army, or troops of any description whatsoever, shall be raised or kept up by the legislature except so many as shall be necessary for guards to the arsenals of the United States, or for garrisons to such posts on the frontiers, as it shall be deemed absolutely necessary to hold, to secure the inhabitants, and facilitate the trade with the Indians: unless when the United States are threatened with an attack or invasion from some foreign power, in which case the legislature shall be authorised to raise an army to be prepared to repel the attack provided that no troops whatsoever shall be raised in time of peace, without the assent of two thirds of the members, composing both houses of the legislature.

A clause similar to this [above] would afford sufficient latitude to the legislature to raise troops in all cases that were really necessary, and at the same time competent security against the establishment of that dangerous engine of despotism, a standing army....

Essay XV by Brutus

March 20, 1788

To the Citizens of the State of New York:

...the supreme court under this Constitution [of 1787] would be exalted above all other power in the government, and subject to no control.... I question whether the world ever saw, in any part of it, a court of justice invested with such immense powers, and yet placed in a situation so little responsible [to people or their representatives]....

...the judges under this system will be *independent* in the strict sense of the word.... there is no power above them that can control their decisions, or correct their errors. There is no authority that can remove them from office for any errors or want of capacity, or lower their salaries, and in many cases their power is superior to that of the legislature....

...this court will be authorised to decide upon the meaning of the Constitution...not only according to the natural and obvious meaning of the words, but also according to the spirit and intention of it.... The supreme court then have a right...to give a construction [meaning] to the Constitution and every part of it, and there is no power provided in this system to correct their construction or do it away. If...the legislature pass any laws, inconsistent with the sense the judges put upon the constitution, they will declare it void; and therefore in this respect their power is superior to that of the legislature.... The judges are supreme—and no law, explanatory of the Constitution, will be binding on them....

Perhaps nothing could have been better conceived to facilitate the abolition of the state governments than... [this judicial system].

A constitution is a compact of a people with their rulers; if the rulers break the compact, the people have a right and ought to remove them.... an appeal will lie [be available] to the people at the period when the rulers are to be elected, and they will have it in their power to remedy the evil [by voting them out of office]; but when this power is lodged in the hands of men independent of the people, and of their representatives [in the legislature], and who are not, constitutionally, accountable for their opinions, no way is left to control them but with a high hand and an outstretched arm [opposition exercised through violent resistance of the people against tyrannical rulers].

VI. A FEDERALIST/ANTI-FEDERALIST FORUM ON LIBERTY AND ORDER IN CONSTITUTIONAL GOVERNMENT

Backdrop to a FEDERALIST/ANTI-FEDERALIST FORUM

Publius in *The Federalist* argued for more power in government because the "vigor of government is essential to the security of liberty" (No. 1). Publius claimed that the "well-structured" Constitution of 1787, with its federalism in a large republic and its separate branches of government, would keep necessary power within proper boundaries; so liberty would be protected.

Brutus, the Anti-Federalist, thought differently. Like other Anti-Federalists, he believed that the Constitution of 1787 "was calculated to abolish entirely the state governments, and to melt down the states into one entire government" (Essay XV). When Brutus looked at the Constitution, he saw too much power and too few limits to guard the liberties and rights of the people and their "free" state governments.

The arguments of Publius and Brutus were directed to the issue of ratification of the Constitution of 1787. And, after intense and careful debates in state conventions throughout the United States, the issue was settled in favor of the new Constitution. So Publius won this critical first round of the debate on constitutional government—its ends, means, and meaning for people of the United States, then and later on.

But the debate on the nature and operation of our Constitution has gone on for more than 200 years; and in one way or another, the contending sides have continued to hold different positions on liberty and order in constitutional government—and they have continued to draw upon Federalist and Anti-Federalist ideas to argue and make decisions. Thus in our current debates on constitutional issues, we Americans are civic heirs of Publius and Brutus.

Principles pertaining to the perennial problem of liberty and order in consitutional government are in the dialogue of Publius and Brutus. Essential elements of the dialogue are presented in Parts I-V of this publication.

A FORUM on these ideas can be an enlightening exercise in civic education. A FORUM refers to any medium for an open discussion about issues and ideas. It also may refer to any public meeting place for open

discussion, such as the Roman Forum of ancient times, the public area that served as a place of assembly for citizens of the ancient Roman republic, whose defenders included a Publius and a Brutus.

Guidelines for the FEDERALIST/ANTI-FEDERALIST FORUM

The Focus of the FORUM: The different positions of Publius (Hamilton and Madison) and Brutus (probably Robert Yates) about liberty and order in constitutional government are the focal points of this FORUM. The Federalists, Hamilton and Madison, and the Anti-Federalist, Brutus, agreed that their constitutional government should provide generally acceptable measures of both liberty and order—freedom and security—for the people living under its authority. However, they had different ideas about what the dangers to liberty and order were. And they had distinct positions on the essential characteristics (qualities) that their constitutional government should have to provide generally acceptable amounts of order and liberty—security and freedom—for Americans and their new nation.

Federalists and Anti-Federalists differed about how much power their constitutional government should have and what kinds of powers to grant it. They also had different views about how to limit the powers of their constitutional government to protect the liberty of individuals and the freedom of the United States of America.

The Core Question: WHAT CHARACTERISTICS ARE NEEDED IN A CONSTITUTION TO ACHIEVE SATISFACTORY LEVELS OF BOTH LIBERTY AND ORDER FOR THE PEOPLE LIVING UNDER THE CONSTITUTIONAL GOVERNMENT'S AUTHORITY? (NOTE: the necessary characteristics pertain to (1) the extent and kinds of powers that the government should have to provide order, stability, and security and (2) the extent and kinds of limitations that should be placed on the government's powers to provide liberty for individuals and their society; the problem is how to balance powers in a constitutional government needed to provide order with limits on powers needed to protect liberty for the people of the United States of America.)

1. What is Hamilton's response to the core question?
   a. What are the major strengths of this position?
   b. What are its major weaknesses?
2. What is Madison's response to the core question?
   a. What are the major strengths of this position?
   b. What are its major weaknesses?
3. What is Brutus' response to the core question?
   a. What are the major strengths of this position?
   b. What are its major weaknesses?

In responding to these questions, identify no less than four and no more than six key strengths or weaknesses of each position and organize your answers around these key ideas. These key ideas of each person are

the ones you have judged to be *the most important* strengths or weaknesses in his position on liberty and order in constitutional government.

The Structure for the FORUM. Follow these directions to organize participants in this activity.

1. Divide the class into six groups (A-F). Each group has the task of carefully reviewing the ideas on liberty and order in constitutional government of one of these three persons: Hamilton (Part III of this publication), Madison (Part IV), and the anonymous Brutus (Part V). Assign Hamilton to Groups A and B; assign Madison to Groups C and D; and assign Brutus to Groups E and F.

2. Have each pair of groups (A-B; C-D; and E-F) prepare for open discussion on ideas of the person assigned to it. Assign Question la (strengths) to Group A and lb (weaknesses) to Group B; Question 2a to Group C and 2b to Group D; Question 3a to Group E and 3b to Group F.

3. Each group should select a Chairperson who will manage the group discussion on its assigned task. Each group (A-F) should conduct discussions on either the strengths or weaknesses of the position assigned to it. For example, Group A should identify major strengths of Hamilton's position and Group B should discuss major weaknesses in Hamilton's position. Group B should refer to the ideas of Brutus as a source of criticisms of Hamilton's position. Likewise Group D should refer to Brutus' position to find criticisms of Madison's position, which will be presented by Group C. In a similar manner, Group F should refer to the ideas of Hamilton and Madison to find criticisms of Brutus' position, presented by Group E.

4. The Chairperson of each group is responsible for organizing the group's presentation to the FORUM. The chair determines which members of the group will take part in the presentation and selects the order in which group members speak. The Chair prepares a very brief introductory statement for the group. Ideally one person in each group will have responsibility for preparing to report on one main point (strength or weakness) of the position assigned to the group. For example, suppose Group A has five members, each person might take responsibility for identifying, examining, and reporting about one "strength" in Hamilton's position. However, it is not mandatory that every member of the group make a formal presentation in the FORUM.

How to Conduct the FORUM: Follow these directions to carry out this activity. The FORUM might be conducted within 100 minutes (two typical classroom periods in school). Or it might be extended to 150 minutes (three classroom periods). The length of the FORUM should be adjusted to meet the needs of the teacher or FORUM leader and the participants. Adjustments can be made by lengthening or shortening the time permitted for each group presentation. The following schedule specifies a three-period FORUM.

1. Identify one person to serve as the Chair of the FORUM. The Chair calls the FORUM to order and calls upon the leader of Groups A and B in turn to introduce the group. Group presentations are limited to 15 minutes.

2. Group A presents the position of Hamilton.
   Group B presents a critique of Hamilton's ideas.
3. The Chair moderates a full-class discussion of the strengths and weaknesses of Hamilton's position and the presentations by Groups A and B. Participants may raise questions or make comments or criticisms about the presentations. This concludes Period One of the FORUM.
4. The Chair opens Period Two of the FORUM. Group C presents the position of Madison. Group D presents a critique of Madison's ideas.
5. The Chair moderates a full-class discussion of the strengths and weaknesses of the positions of Madison and of the presentation of Groups C-D. Participants raise questions and make comments or criticisms. This ends Period Two of the FORUM.
6. The Chair opens Period Three of the FORUM. Group E presents the position of Brutus. Group F presents a critique of Brutus' ideas.
7. The chair moderates a full-class discussion of the strengths and weaknesses of the three positions (Hamilton, Madison, Brutus) and of the strengths and weaknesses of the six group presentations. Participants in this full-class discussion should raise questions and criticisms of the three positions of Hamilton, Madison, and Brutus. They should also offer their views about the strengths and weaknesses of the presentations by the six groups. The moderator should prevent any individuals from dominating the discussion. Encourage broad participation.

Either before or during this discussion, participants should be asked to record their preferences for one of the three positions and for one of the six FORUM presentations. A form is provided for this purpose in the "Guide for Teachers and FORUM Leaders" (see the Appendix). At this point, participants have an opportunity to register and voice their concluding opinions about the positions of the Federalists and Anti-Federalists that have been the focal points of the FORUM. Conclude the FORUM at the end of this discussion.

Suggestions for Other FORUMS

Anti-Federalists at several state ratifying conventions proposed amendments to the Constitution of 1787. Several of these ideas were added to the Constitution in 1791 and are known as The Bill of Rights (Amendments I-X). Several other proposed amendments were debated and defeated. However, from the 1780s until today, Americans have deliberated, discussed, and debated proposed amendments to their Constitution. Examples of these proposed amendments might be focal points for other FORUMS, which could be conducted in terms of the core ideas in this booklet.

Consider these proposed amendments to the Constitution of the United States:

1. The term of office for Members of the House of Representatives shall be four years.

2. The term of office of the President and Vice President shall be six years. No person shall be eligible for more than one term as President or Vice President.
3. The executive powers vested in the President shall include the authority to veto individual items of appropriation within bills submitted by Congress for executive approval.
4. Justices of the Supreme Court shall hold their offices for the term of five years and will be eligible for unlimited reappointment by the President, subject to their reconfirmation by the Senate.
5. Eligible voters of each state in the United States shall have the right to vote directly on legislation enacted by the federal government in a national referendum whenever a majority in both the House of Representatives and Senate agree to this procedure. In any national referendum, the majority of voters shall have the power to nullify legislation enacted previously by the federal government.

Each of the preceding proposals has deep roots in the American civic heritage. Item 4, for example, is compatible with Anti-Federalist views on making the federal judiciary accountable to the people. By increasing the power of the President to check Congress, item 3 might be viewed as compatible with Madison's ideas on separation of powers expressed in ***The Federalist***, No. 51.

Pro/Con discussions might be conducted in response to each of the proposed amendments listed above. Participants in these FORUMS can use ideas and information in this booklet from ***The Federalist*** and the essays of Brutus to illuminate discussions and debates about the proposed amendments. In each case this is the core question: Should one or more of the proposed amendments in this list be added to the Constitution?

Each of the five proposed amendments in the preceding list is the subject of a Jefferson Meeting booklet, which contains ideas and information about the pro and con sides to the proposition. Participants interested in discussing and debating these issues should consult the following booklets:

1. *Terms of Office in the Legislative Branch.*
2. *The Presidential Term and Executive Power.*
3. *The Veto and the Separation of Powers.*
4. *Judicial Independence and Accountability.*
5. *Direct Democracy and Representative Government.*

These booklets are published by The Jefferson Foundation, 1529 18th Street, NW, Washington, DC 20036; the telephone number is (202) 234-3688. There are also two guidebooks that accompany the issue booklets: (1) **The Jefferson Meeting on the Constitution: The Constitution in the Classroom** and (2) **The Jefferson Meeting on the Constitution: The Constitution in the Community**. These guidebooks provide directions for teachers and

community leaders on how to organize and conduct a Jefferson Meeting on these proposed constitutional amendments. These procedures are similar to the ones presented in this booklet for organizing and conducting a FEDERALIST/ANTI-FEDERALIST FORUM.

The Jefferson Meeting booklets and guidebooks listed above can be used in concert with this booklet, *Liberty and Order in Constitutional Government: Ideas and Issues in The Federalist Papers*, to conduct discussions and debates (FORUMS) on proposed constitutional amendments that have roots in the Founding Period of United States history. One can enrich and enliven Jefferson Meeting discussions and debates on these proposed amendments by examining them in light of the ideas on constitutional government of Publius, the Federalist, and Brutus, the Anti-Federalist.

VII. CHRONOLOGY OF EVENTS ASSOCIATED WITH THE FEDERALIST/ANTI-FEDERALIST DEBATE

September 17, 1787: Conclusion of the Federal Convention; each of the 12 state delegations voted to approve a final copy of a proposed Constitution of the United States.

September 20, 1787: The Congress of the United States received the proposed Constitution.

September 28, 1787: Congress voted to send the Constitution to the legislature of each state; Congress asked each state to either approve or reject the proposed Constitution.

October 18 1787: The first in a series of 16 Anti-Federalist essays by Brutus (pseudonym) appeared in the *New York Journal*; these essays were representative of many Anti-Federalist writings published throughout the United States during the debates on the Constitution; although the identity of Brutus is unknown, most scholars today believe he was Robert Yates of New York.

October 27, 1787: The first *Federalist* paper, written by Alexander Hamilton, appeared in in a New York City newspaper, *The Independent Journal*; this was the first in a series of 85 essays under the pseudonyn Publius (51 by Hamilton) to explain the Constitution of 1787 and argue for ratification of it.

October 31, 1787: The second *Federalist* paper was published; it was the first of five essays written by John Jay under the pseudonym of Publius.

November 22, 1787: The tenth *Federalist* paper was published; this was the first of 29 essays written by James Madison under the pseudonym of Publius.

December 7, 1787: Delaware was the first state to ratify the Constitution; the vote was 30-0.

December 12, 1787: Pennsylvania ratified the Constitution by a 46 to 23 vote.

December 18, 1787: New Jersey ratified the Constitution by a 38-0 vote; twenty-one members of the Pennsylvania Ratification Convention issued an Anti-Federalist statement: ***The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to their Constituents***.

January 2, 1788: Georgia was the fourth state to ratify the Constitution; the vote was 26-0.

January 9, 1788: Connecticut ratified the Constitution by a 128 to 40 vote.

February 6, 1788: Massachusetts was the sixth state to ratify the Constitution; the vote was 187-168; a Federalist victory was secured by promising to amend the Constitution to guarantee certain rights of the people and the states.

March 22, 1788: Volume I of *The Federalist* was published by McLean and Company of New York city. This volume included 36 essays, which had previously appeared in New York newspapers.

March 24, 1788: In a state-wide referendum, voters of Rhode Island rejected the Constitution; the vote was 2, 711 to 239.

April 2, 1788: *The Federalist* No. 77 by Hamilton was published; this was the last essay in this series to appear initially in a newspaper (eight more essays would be written to complete the series).

April 28, 1788: Maryland was the seventh state to ratify the Constitution; the vote was 63-11.

May 23, 1788: South Carolina ratified the Constitution by a vote of 149-73; amendments were proposed.

May 28, 1788: Eight ***Federalist Papers*** (Numbers 78-85 by Hamilton) appeared in print for the first time in Volume II of ***The Federalist***, which was published by McLean and Company (Volume II included Numbers 37-85); the complete collection of ***The Federalist Papers*** was included in two volumes.

June 21, 1788: New Hampshire was the ninth state to ratify the Constitution; the vote was 57-47; amendments were proposed.

June 25, 1788: Virginia ratified the Constitution by a 89-79 vote.

June 27, 1788: The Virginia Ratification Convention proposed amendments to the Constitution; These amendments, including a Bill of Rights, were advanced initially by Anti-Federalist leaders (for example, George Mason and Patrick Henry); Federalist leaders (James Madison, for example) pledged to add a Bill of Rights to the Constitution.

July 2, 1788: Cyrus Griffin, the president of Congress, recognized that a minimum of nine states had ratified the Constitution, required by Article VII of the document.

July 26, 1788: New York was the eleventh state to ratify the Constitution; the vote was 30-27; amendments were proposed.

August 2, 1788: The North Carolina Convention refused to ratify the Constitution; amendments were proposed.

September 13, 1788: Congress named New York city as the site of the new government under the Constitution.

October 10, 1788: Congress under the Articles of Confederation completed its last day of existence; it was disbanded to make way for a new government under the Constitution of 1787.

April 1, 1789: Members of the House of Representatives, elected under the Constitution, met and began to organize their branch of the new Congress.

April 6, 1789: Members of the Senate, elected under the Constitution, met and began to organize their branch of the new Congress.

April 30, 1789: George Washington, elected as the first President under the new Constitution, was inaugurated; he took the oath of office prescribed by the Constitution.

June 8, 1789: James Madison, Represenative from Virginia, presented a Bill of Rights to the House of Representatives; he proposed this Bill of Rights as a set of amendaments to the Constitution.

September 25, 1789: Congress approved amendments to the Constitution (a Bill of Rights) and sent them to the states for ratification.

November 21, 1789: North Carolina became the twelfth state to ratify the Constitution; the vote was 194-77.

May 29, 1790: Rhode Island ratified the Constitution, the last of the original thirteen states to do so; the vote was 34-32.

December 15, 1791: Virginia was the tenth state to ratify ten amendments to the Constitution; these amendments became part of the Constitution, the Bill of Rights.

APPENDIX: GUIDE FOR TEACHERS AND FORUM LEADERS

Introduction

Liberty and Order in Constitutional Government is a booklet on ideas and issues in *The Federalist Papers*. *The Federalist* remains, as James Madison noted, "the most authentic exposition of the text of the Federal Constitution, as understood by the Body which prepared and the authority which accepted it" (Letter to Thomas Jefferson, February 8, 1825).

But *The Federalist*, exceeding Madison's claims about it, has transcended time and place and acquired universal significance, as George Washington predicted it would: "When the transient circumstances and fugitive performances which attended this Crisis shall have disappeared, That Work *The Federalist* will merit the Notice of Posterity; because in it are candidly and ably discussed the principles of freedom and the topics of government, which will be always interesting to mankind so long as they shall be connected in Civil Society" (Letter to Alexander Hamilton, August 28, 1788).

In praising *The Federalist*, we must be careful to remember the other side, because Anti-Federalist ideas have endured as vital elements of the American civic culture. Professor Ralph Ketchum reminds us that Anti-Federalist ideas have "surfaced again and again in various guises among later generations of Americans. Those ideas, as well as the enticing prospects held out by Publius, are a vital element in the American political tradition and are properly viewed as part of the philosophy of the Constitution "*The Anti Federalist Papers and the Constitutional Convention Debates* 1986, p. 20).

The booklet, *Liberty and Order in Constitutional Government*, recognizes that ideas and issues in *The Federalist* are inescapably tied to their counterpoints in essays of the Anti-Federalists. So, the perennial questions and issues of liberty and order in constitutional government are addressed here from the alternative perspectives of the antagonists in the great debate about the Constitution of 1787. A fundamental assumption of this work is that these basic civic ideas of the Founding Period are still interesting and useful to citizens.

This "Guide" provides suggestions for teachers of courses in history and government (political science) and FORUM leaders to help them use this booklet effectively. The booklet is both a source of information and ideas and a means to organize and conduct FORUMS—open discussions on questions and issues about constitutional government in the United States.

The primary purpose of the booklet is to set the terms of the FEDERALIST/ ANTI-FEDERALIST FORUM, which is described in Part VII of *Liberty and Order in Constitutional Government*. Thus, the emphasis in this "Guide" is on the FORUM:

(1) how to use the contents of the booklet to prepare students to participate in a FEDERALIST/ANTI-FEDERALIST FORUM and (2) how to organize and conduct a FORUM on the ideas and issues emphasized in the booklet.

This "Guide for Teachers and FORUM Leaders" offers suggestions, NOT prescriptions, for use of the booklet and management of a FORUM. It is expected that teachers AND FORUM leaders will modify suggestions presented here in order to meet the interests and needs of students and other participants in this program.

Objectives and Curriculum Connections

The booklet, *Liberty and Order in Constitutional Government*, includes information and ideas for conducting a FORUM on a perennial problem of constitutional government: how to adequately provide both liberty and order for all individuals living under the authority of a government. FORUM participants are expected to use this booklet as a resource to assist their preparation for presentations and discussions of alternative views in *The Federalist Papers* and essays of Anti-Federalists.

Users of the booklet and participants in the FORUM will be expected to

1. acquire knowledge of core ideas on constitutional government in *The Federalist Papers* and Anti-Federalist essays;
2. use this knowledge to analyze and appraise alternative positions in *The Federalist Papers* and Anti-Federalist essays on liberty and order in constitutional government;
3. participate in a FORUM to deliberate, discuss, and make decisions about ideas and issues in *The Federalist Papers* and Anti-Federalist essays;
4. build skills in reflective thinking, deliberation, and discourse about ideas and issues of constitutional government in the United States;
5. develop reasoned commitment to core ideas of constitutional government in the United States.

The preceding objectives emphasize knowledge of core ideas in our American civic tradition and ability to use them in public discourse and debate. Thus these objectives fit an overarching goal of education in our schools— development of responsible citizenship.

The contents of the booklet fit easily into the high school curriculum; courses in American history and government are supposed to emphasize the Founding Period and ideas and issues of our constitutional government in the past and present. The booklet may also be used with introductory college-level courses in American history and government.

The booklet provides a brief introduction to core ideas of American constitutional government that are derived from ***The Federalist*** by Alexander Hamilton, James Madison, and John Jay and from the Anti-Federalist essays of Brutus.

Users of the booklet and participants in the FORUM should review important events of the Founding Period, especially events directly associated with the Constitutional Convention and subsequent ratification debates. Knowledge of the historical context of the Federalist/Anti-Federalist debates is necessary to satisfactory use of the booklet and participation in the Forum. It is assumed that most classroom teachers will use the booklet at the end of their treatments of the Founding Period; thus an appropriate context in history will have been established for users of the booklet and participants in the FORUM.

How to Prepare for a FEDERALIST/ANTI-FEDERALIST FORUM

The booklet, *Liberty and Order in Constitutional Government*, has seven parts. Parts I-V include knowledge needed for participation in a FEDERALIST/ANTI-FEDERALIST FORUM, which is described in Part VI. Part VII is a chronology of events.

How might teachers use the contents of Parts I-V to help students prepare to be effective participants in a Federalist/Anti-Federalist Forum?

1. Introduce the topic by asking students to read Part I: *"Introduction to* ***The Federalist*** *and the Anti Federalists in the Debate on Ratification of the Constitution."* Focus attention on the meaning of key terms, such as *The Federalist*, Federalists, Anti-Federalists, ratification, Federal Convention of Philadelphia, Constitution of 1787.

Make certain that students also know about key actors, such as Alexander Hamilton, James Madison, John Jay, Brutus (probably Robert Yates). Finally, refer students to the "Chronology of Events Associated with the Federalist/Anti- Federalist Debate" in Part VII. This chronology can help them understand the historical context of ***The Federalist Papers*** and keep track of the main events of the ratification debate.

Emphasize the two primary sources at the end of Part I: (1) the excerpt from *The Federalist* No.1 and (2) the excerpt from Essay No. 1 by Brutus. Have students compare and contrast the statements of Hamilton and Brutus about the significance of the constitutional choice facing Americans in 1787. They should note the basic similarities of the two statements about the historic challenge facing Americans.

2. Introduce the problem of constitutional government, which is the focal point for the remainder of the booklet, by asking students to read Part II: *"Liberty and Order in Constitutional Government: Core Ideas in the Ratification Debate, 1787-88."* Emphasize the meaning of key terms, such as constitutional government, liberty, security, power in government, social order, stability, anarchy. Focus attention on key terms in the Preamble to the Constitution, such as common defence, domestic tranquility, blessings of liberty.

Stress that a constitutional government is one limited by the supreme law of a founding charter—Constitution—which raises the problem of how and where to set the limits.

Use the excerpts from primary sources in Part II to help students reflect upon the inherent tension between liberty and order as ends of a constitutional government; and the tension between power as a means to provide order and liberty too and limits on power to protect liberty. Focus attention on the Preamble to the Constitution and its emphasis on liberty and order as ends of constitutional government. Have students compare and contrast the statements by Hamilton, Madison, Jefferson, and Ellsworth on liberty and order, and on power and its limits in constitutional government.

Make certain students understand that the remainder of the booklet is organized in terms of the ideas presented in Part II. They should also know that the FORUM described in Part VI is cast in terms of the ideas in Part II.

3. Have students read Part III: *"The Federalist (Hamilton) on Liberty and Order in Constitutional Government."* Focus attention on the summary of Hamilton's position, which is expressed in terms of three topics: (1) intolerable weakness in government, (2) infusion of energy in government, (3) limits to energy in govern-

ment. Tell students to think about the meaning of each topic and the main points within each topic.

Emphasize the primary sources—excerpts from *The Federalist* Nos. 23, 24, 70, 78—which exemplify main points in Hamilton's position. Tell students to use the questions that precede the documents to guide their reading and thinking about Hamilton's positionin *The Federalist*.

Make sure that students know the meaning of these key terms: Articles of Confederation, federal government, state governments, military powers, executive branch, legislative branch, judicial branch.

4. Have students read Part IV: *"The Federalist (Madison) on Liberty and Order in Constitutional Government."* Focus attention on the summary of Madison's position, which is expressed in terms of three topics: (1) threats to liberty and order from a tryannical majority, (2) a well-structured Constitution to prevent tyranny, and (3) necessary and proper powers in a free government. Tell students to think about the meaning of each topic and the main points within each topic.

Emphasize the primary sources—excerpts from *The Federalist* Nos. 10, 41, and 51—which exemplify main points in Madison's position. Tell students to use the questions that precede the documents to guide their reading and thinking about Madison's position in *The Federalist*.

Make sure that students know the meaning of these key terms: tyranny, tyranny of the majority, minority rights, direct democracy, representation in government, popular government, faction, well-structured government, republic, federalism, separation of powers. Stress Madison's conception of a free government, which is central to his position in *The Federalist*.

5. Have students read Part V: *"Anti-Federalists on Liberty and Order in Constitutional Government."* Focus attention on the summary of the Anti-Federalist position, which is expressed in terms of three topics: (1) opposition to strong power in a "consolidated" government, (2) advocacy of the small republic, and (3) arguments for a Federal Bill of Rights. Tell students to think about the meaning of each topic and the main points within each topic.

Emphasize the primary sources, excerpts from the essays of Brutus—Nos. I, II, IV, X, XV—which exemplify main points of the Anti-Federalist position. Tell students to use the questions that precede the documents to guide their reading and thinking about Brutus' position.

Make sure that students know the meaning of these key terms: consolidated government, the small republic, Brutus' conception of free government, militia, amendment. Have students compare Brutus' conception of free government with Madison's idea of a free government.

Inform students that there were many variations on the Anti-Federalist themes of opposition to the Constitution of 1787. However, the position of Brutus' is broadly representative of important Anti-Federalist ideas. And his essays were printed in New York city newspapers at about the same time as the publication of *The Federalist Papers*. Brutus meant his essays to be a direct Anti-Federalist response to the arguments of *The Federalist*. Thus Brutus' essays are very appropriate examples of the Anti-Federalist side of the great debate of 1787-88 and one of the very best sources of direct comparison to the ideas of *The Federalist*.

When students complete their studies of Parts I-V of the booklet, they will be prepared to participate in a FEDERALIST/ANTI-FEDERALIST FORUM. The

procedures for organizing and conducting the FORUM are described in Part VI of this booklet.

How To Conduct a FEDERALIST/ANTI-FEDERALIST FORUM

Participation in a FORUM gives students an opportunity to practice cognitive and participation skills needed for responsible citizenship. Students must practice cognitive skills in analysis, synthesis, and evaluation. Students must also work in groups and practice interpersonal skills, such as cooperating with other group members to complete a task, compromising to iron-out differences that could impede completion of the group's work, giving and receiving constructive criticism, and tolerating opinions different from their own. Finally, students must practice skills in speaking during their group work and FORUM presentations.

A FORUM refers to any medium for an open discussion about issues and ideas. It may also refer to the place where such an open discussion takes place.

Part VI of the booklet presents guidelines for conducting a FEDERALIST/ANTI-FEDERALIST FORUM. The Forum is about the different positions of Hamilton, Madison, and Brutus on how to have liberty and order in constitutional government. The core question: What characteristics are needed in a constitutional government to provide sufficient liberty and order for the people living under this government's authority.

1. What is Hamilton's response to the core question?
   a. What are the major strengths of this position?
   b. What are its major weaknesses?
2. What is Madison's response to the core question?
   a. What are the major strengths of this position?
   b. What are its major weaknesses?
3. What is Brutus' response to the core question?
   a. What are the major strengths of this position?
   b. What are its major weaknesses?

Part VI of the booklet includes step-by-step procedures for organizing and conducting a FORUM, which need not be repeated here. Thus the remainder of this commentary is about two aspects of the Forum not discussed in Part VI of the booklet: (1) roles of different types of FORUM participants and (2) rules for conducting the full-group or Plenary Session of the FORUM.

Roles of FORUM Participants

Group Member. The Forum involves group work in preparation for a Plenary or Full-Class Session. The participants are divided into six groups (A-F). The teacher might poll students to find out which groups they would prefer to join. However, groups should be roughly equal in numbers, and it is the teacher's responsibility to assign students to groups. Each group member is responsible for acquiring knowledge needed to complete the group's task. And each group member is supposed to share his/her knowledge with the group. Finally, group members should cooperate to achieve a common goal—preparation of a defensible position to present in the Plenary Session of the FORUM.

There should be an emphasis on *cooperative learning* in each group. Each group member is expected to help others to plan and present the best possible position statement on behalf of the group.

Group Chairperson. Each group (A-F) will be led by a Chairperson. The teacher should either appoint a Chairperson or ask each group to elect one. The

Chairperson of each group has responsibility for convening meetings, keeping the group on task, facilitating discussions, and deciding who will represent the group in presenting its position in the Plenary Session of the FORUM. The Group Chairperson reports to the Plenary Session Chairperson about who will serve as reporters of the group's position and the order of presentations.

Group Reporter. Ideally, all members of each group should have some part in the group's presentation to the Plenary Session. However, this may not be desirable. The teacher should help each Group Chairperson to decide who will or will not be reporters of the group's position in the FORUM. Each Group Reporter is responsible for developing a brief presentation; each presentation will be one part of the complete presentation of the group's position.

Plenary Chairperson. The Plenary Chairperson directs the FORUM, supervising the group work that precedes the Plenary Session and presiding over the Plenary Session. A student/participant might be selected to play this role, with the help of the teacher or FORUM leader. *In most instances, the teacher or official FORUM leader should have this role.* The Chair calls the Plenary Session to order, introduces each group and its reporters, enforces time limits, and keeps the session in order.

Plenary Session Participants. All members of the class are expected to take part in this session. Two groups at a time should be seated in front of the class or full-group to make the group presentations. For example, Groups A and B should be together in front of the class; each group is responsible for making a 15-minute presentation of the group's position. Members of the audience are expected to listen attentively and take notes in preparation for asking questions and making comments or criticisms during the final part of the fifty-minute session.

Rules for the Plenary Session

Establish rules and procedures for the Plenary Session in advance. Group Chairpersons are expected to review the following rules and procedures with their groups before coming to the Plenary Session.

Rules About Time

1. Each group has a limit of 15 minutes for its presentations. If 5 members are scheduled to make reports, then each one might speak for 3 minutes.
2. Following the presentations of each pair of groups (for example, A-B; C-D; E-F), the full-group may discuss the issue. Questions and comments or criticisms will be limited to 2 minutes. A participant in the full-group discussion may speak more than once. However, the Plenary Chairperson should encourage broad participation; thus no member of the full-group should be allowed to dominate the discussion.
3. A group member whose presentation is being discussed may respond to questions or criticisms; but these responses will be limited to 2 minutes.
4. Both group presentations together will take no more than 30 minutes; the remainder of the period will be used for full-group discussion of the presentations.

Rules About Procedures

1. The Chairperson calls the Plenary Session to order.
2. Members of the pair of groups scheduled to present positions (for example, Group A and Group B) are seated in front of the class—one group on either side of the speaker's position, occupied initially by the Chairperson.

3. The Chairperson will call each speaker from one group (A for example) to present the group's position in response to the core question. Then the Chairperson will call each speaker from the other group to present this group's position.
4. The Chairperson serves as moderator for a full-class discussion of the group presentations.
5. Throughout the Plenary Session, the Chairperson keeps order, enforces time limits, and calls upon all speakers.
6. The last activity of the Plenary Session is a polling of all participants about their evaluations of the positions presented by each group and of the quality of the presentations. Have participants complete a copy of the Participant Rating Sheet (see the following page) to register their evaluations.
7. After the participants have completed all of their tasks, the Chairperson adjourns the Plenary Session.

NOTE: The teacher or FORUM leader might choose to conduct a follow-up discussion on the FORUM. At that time, the teacher or leader may report the participants' evaluations as registered on the Participant Rating Sheets. Then the teacher or leader might conduct a discussion on opinions about the FORUM.

PARTICIPANT RATING SHEET
FEDERALIST/ANTI-FEDERALIST FORUM

Name _____

Date _____

Evaluate the three positions presented in this FORUM: *The Federalist* (Hamilton), *The Federalist* (Madison), and the Anti-Federalist (Brutus). Answer the following questions about each position; record your response in the space next to the appropriate answer to each question.

1. To what extent do you agree or disagree with the position of Hamilton in *The Federalist*?

_____ A. Strongly Agree
_____ B. Agree
_____ C. Uncertain
_____ D. Disagree
_____ E. Strongly Disagree

2. To what extent do you agree or disagree with the position of Madison in ***The Federalist***?

_____ A. Strongly Agree
_____ B. Agree
_____ C. Uncertain
_____ D. Disagree
_____ E. Strongly Disagree

3. To what extent do you agree or disagree with the position of the Anti-Federalist, Brutus?

_____ A. Strongly Agree
_____ B. Agree
_____ C. Uncertain
_____ D. Disagree
_____ E. Strongly Disagree

Evaluate the six groups (A-F) that made presentations in this Forum. Use this scale.

Circle the appropriate rating_____ Poor 1 2 3 4 Excellent.

Evaluate the presentation of Group A— 1 2 3 4
Evaluate the presentation of Group B— 1 2 3 4
Evaluate the presentation of Group C— 1 2 3 4
Evaluate the presentation of Group D— 1 2 3 4
Evaluate the presentation of Group E— 1 2 3 4
Evaluate the presentation of Group F— 1 2 3 4

Alternative Schedules for a FEDERALIST/ANTI-FEDERALIST FORUM

Teachers may make various judgments about how to schedule the events of a FORUM. **Four** different schedules are presented below. Some teachers may prefer a fifth alternative, which they create. Teachers are encouraged to think carefully about how to modify the following schedules and procedures to fit their circumstances and meet the needs of their students.

Schedule 1 (ten class periods; about 50 minutes per period)
Period 1: Parts I, II, VII of the booklet.
Period 2: Part III of the booklet.
Period 3: Part IV of the booklet.
Period 4: Part V of the booklet.
Period 5. Part VI: Organize and begin work of Groups A-F.
Period 6: Continue work of Groups A-F.
Period 7: First Plenary Session, Presentations of Groups A-B.
Period 8: Second Plenary Session, Presentations of Groups C-D.
Period 9: Third Plenary Session, Presentations of Groups E-F.
Period 10: Follow-up Session.

Schedule one is based on the assumption that students will need to be carefully guided through the subject matter of Parts I-V in preparation for group work and presentations to the Plenary Session.

Schedule 2 (six class periods; about 50 minutes per period)
Period 1: Overview of Parts I-V and VII of the booklet. Discuss relationship of the contents to participation in the FORUM. Give students responsibility for independently studying the subject matter and drawing upon it as needed in group work and in preparation for the Plenary Session.
Period 2: Part VI: Organize and begin work of Groups A-F.
Period 3: Continue work of Groups A-F.
Period 4: First Plenary Session, Presentations of Groups A-B.
Period 5: Second Plenary Session, Presentations of Groups C-D.
Period 6: Third Plenary Session, Presentations of Groups E-F.

Schedule two is based on the assumption that students can study the contents of Parts I-VII on their own in preparation for group work and the Plenary Session.

Schedule 3 (six class periods; about 50 minutes per period)
Period 1: Parts I-II and VII of the booklet.
Period 2: Parts III-V of the booklet
Period 3: Part VI: Organize groups (A-D) and begin group work.
Period 4: Continue group work.
Period 5: First Plenary Session, Presentations of Groups A-B.
Period 6: Second Plenary Session, Presentations of Groups C-D.

This schedule is abbreviated by eliminating Groups E-F. This means dispensing with Group E, presentation of Brutus' position and Group F, the critique of Brutus' position. The Anti-Federalist position would be represented in the critiques of Hamilton and Madison by Groups B and D.

Schedule three involves two fewer groups, and each group (A-D) will be larger than in the other schedules. Thus it may not be possible for all group members to participate as reporters of the group's position to the Plenary Session. So, if nec-

essary, each group will select its representatives to serve as reporters of its position to the Plenary Session. Other members of each group will contribute to preparation of the group's position during the discussions preceding the Plenary Session.

Schedule 4 (five class periods; about 50 minutes per period)
Period 1: Parts I-III and VII of the booklet.
Period 2: Parts IV-V of the booklet.
Period 3: Part VI: Organize Groups A-B and begin group work.
Period 4: Continue group work.
Period 5: Plenary Session.

This schedule is abbreviated by eliminating Groups C-F. This means dividing the class into two larger groups to prepare presentations for one Plenary Session. Group A presents *The Federalist* position (combination of Hamilton and Madison) and Group B presents a critique of this position based on the Anti-Federalist ideas of Brutus.

In this schedule, there are two large groups instead of six smaller groups. Thus it will not be possible for all members of each group to participate as reporters in the Plenary Session. A maximum of only four or five members of each large group (A and B) will be selected to report the position of the group to the Plenary Session. Other members will contribute to development of these presentations during the group work preceding the Plenary Session.

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